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Supreme Court, U.S.
FILED
APR 20 2005
OFFICE OF THE CLERK

NO. 04-1289

In The Supreme Court of the United States

TIMOTHY MORRISON,
Petitioner,

v.

RICHARD L. WARREN, ET AL.
Respondent.

On Petition For Writ Of Certiorari To The United States Court of Appeals for the Sixth Circuit

RESPONDENTS BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW BY PETITIONER

1. Did the Sixth Circuit Court of Appeals err in holding that procedural due process is not warranted for persons who – in the Court's estimate – "cannot prevail" on the merits of an underlying claim, and are thus not deserving of a full and fair opportunity to be heard even if such a hearing is guaranteed by the Constitution?

2. Is procedural due process "absolute" in terms of affording some sort of hearing to a person deprived or facing deprivation of a constitutional right, as this Court has previously held, or is it relative to the individual circumstances and a court's or tribunal's estimate of the underlying merits or perceived "futility" of the individual case, as the Sixth Circuit has now held. In other words, is it proper to conflate the guaranteed "process" with the underlying "merits" of a case?

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RESPONDENTS' BRIEF IN OPPOSITION TO TIMOTHY MORRISON'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE AND FACTS

The Court of Appeals for the Sixth Circuit and the U.S. District Court for the Northern District of Ohio both set forth facts in support of their decisions in this matter.

Those Courts found that Petitioner Timothy Morrison ("Morrison"), while working for the Sheriff as a Deputy, became embroiled in a domestic dispute with his wife. As a result she obtained a Civil Protection Order ("CPO") against him and he was not permitted to carry a weapon while that order was in effect. As a result, the Sheriff's Department notified him that his employment would be terminated because of the CPO and a pre-termination hearing was held. He attended this hearing and admitted that the CPO was in existence but stated that he was seeking to have the Order set aside. The hearing officer found that due to the CPO he was unable to carry a weapon which was a requirement of his employment and upheld the decision to end his employment. This decision was grieved and the matter was arbitrated. In the meantime, the CPO was lifted. However, a subsequent disagreement with his wife led to domestic violence charges and he ultimately pled guilty to disorderly conduct.

The grievance arbitration hearing lasted for two full days at which time both the Sheriff and Morrison were permitted to submit evidence and cross examine witnesses. The Sheriff submitted his argument that the decision to fire Morrison was warranted, and that furthermore, Morrison's subsequent decision to plead

guilty to disorderly conduct precluded the Sheriff from bringing him back into the Sheriff's employ. Sheriff Warren[1] testified at the hearing and the arbitrator relied upon his testimony that he would have terminated Morrison if he had still worked for him when the disorderly conduct guilty plea was entered.

The arbitrator entered a 43-page decision.[2] It is important to note here that the Arbitrator spent a great deal of time and effort reviewing and analyzing the arguments of the employee herein. Only then did he issue his lengthy decision finding that although the collective bargaining agreement had not been followed in all respects as to the initial decision to fire this employee, resulting in a pre-mature firing, the remedy was not to reinstate him, but rather to give him back pay from the original date he was fired to the date when he would have been fired for the subsequent disorderly conduct conviction.

The Arbitrator did not find that the employer had violated his due process rights under the constitution of the United States or the State of Ohio. Rather he found that the terms of the labor contract had been violated and he entered his remedy accordingly. Morrison appealed the Arbitrator's decision to the Court of Common Pleas

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[1] Since the events in this case occurred, Sheriff Warren lost his reelection bid in November, 2000, and Sheriff Drew Alexander now serves as Sheriff in Summit County.

[2] The original Arbitrator's Opinion and Award was 43 pages long. The Petitioner has attached a portion of this decision in the Appendix (Pet'r App 55a-72a) of his Petition for Writ of Certiorari. However, the first 30 pages of said Opinion and Award have not been included in the portion submitted by the Petitioner.

but the union did not support this appeal and it was dismissed. The Court of Appeals for the Ninth District of Ohio upheld this decision. As such, the Arbitrator's award became final and the County paid Morrison the backpay as ordered by the Arbitrator.

Subsequently this action was filed in the United States District Court for the Northern District of Ohio alleging that Morrison did not receive due process as to his termination based upon his subsequent conviction for disorderly conduct - which occurred after he had been originally discharged.

Both the District Court and the Sixth Circuit Court found that he had received all process that was due under the Fourteenth Amendment to the United States Constitution. The Sixth Circuit did not find that he was not entitled to due process – but rather that he received the minimal due process necessary in this situation.

Morrison then filed his Petition for Writ in this Court. Respondent maintains that the Sixth Circuit Court properly found that Morrison received all process that he was due and urges this Court to deny the requested Writ.

REASONS FOR DENYING THE WRIT

THE SIXTH CIRCUIT COURT OF APPEALS PROPERLY HELD THAT THE ABBREVIATED DUE PROCESS PETITIONER RECEIVED WAS SUFFICIENT TO SATISFY THE DUE PROCESS CLAUSE PURSUANT TO THE BALANCING TEST SET FORTH IN THE PRIOR DECISIONS OF THIS COURT

Morrison contends that the Sixth Circuit decision effectively found that he was not entitled to due process or that due process would be futile in this case. This is simply not what the Court held. Rather, the Sixth Circuit Court applied the balancing test set forth by this court in *Mathews v. Elderidge*, 424 U.S. 319, 96 S.Ct. 893 (1976) and found that the abbreviated process Morrison received was sufficient under the facts of the case.

It is implicit in the multitude of cases on the issue of procedural due process, that "due process is flexible" calling for "such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334, *quoting Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2592, 2600, (1972).

Moreover, in determining whether abbreviated due process may be justified, three factors should be considered:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

> finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. 335, 96 S.Ct. 903.

The Sixth Circuit Court determined that the due process Morrison received for the discharge based upon his subsequent conviction was extremely abbreviated. They noted however that Morrison did not, and could not, "allege that he was not given an opportunity to respond to the evidence during the two-day arbitration". (Pet'r App 13a). Applying the factors of the Matthew's balancing test the court determined that the abbreviated process Morrison received constituted a "sufficiently meaningful opportunity to satisfy due process requirements." (Pet'r App 14a). Petitioner argues that the Sixth Circuit Court incorrectly applied this test by finding that the process would have been futile. That is not what the court found.

In determining whether there would be a violation of private interests or a risk of an erroneous deprivation the Court relied upon the arbitrator's decision. The Arbitrator found the Sheriff's testimony to be credible and relied upon that testimony in making his decision. The crux of the testimony made good sense to the Court. The Sixth Circuit Court merely acknowledged these facts. No additional procedural safeguards would have changed the result. Finally, the Court acknowledged that the government's interest in upholding the abbreviated process was clear in light of the fact that the employee deputy had been convicted of breaking the law he was sworn to uphold.

Petitioner relies upon the decision in *Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042 (1978) for his argument that due process rights cannot be overlooked despite the underlying merits of the case. However, the facts of the *Carey* case were that two students were suspended for 20 days from school with absolutely no opportunity to be heard on the underlying factual issues. In the case at bar, Morrison was given a two-day hearing to dispute the facts against him and presented witnesses to the arbitrator. Thus, the cases are factually inapposite.

In fact, the decisions of this court have held again and again that these cases do not arise in a vacuum. There are always facts and circumstances surrounding a claim of a deprivation of due process and the courts must weigh the facts to decide whether there has been a constitutional deprivation.

The Sixth Circuit Court did so in this case and held that Morrison received all of the process he was due. As such, this Court should deny the writ.

CONCLUSION

Based on the foregoing arguments, this Court must deny this writ. The Sixth Circuit decision does not conflict with this Court's precedent and is not likely to erode the meaning of due process. Moreover, the Sixth Circuit Court is not breaking new ground and creating or disregarding the law of the land. Their decision merely applied the law to the facts of this case as the caselaw requires them to do. For these reasons, this Court should deny the writ requested herein forthwith.

Respectfully submitted,

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